



## **Privacy Act of 1974; System of Records**

**AGENCY:** Department of Veterans Affairs (VA), Veterans Health Administration (VHA).

**ACTION:** Notice of new system of records.

**SUMMARY:** The Privacy Act of 1974 requires that all agencies publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, "VA Employee Whole Health Program Records-VA."

**DATES:** Comments on this new system of records must be received no later than 30 days after date of publication in the Federal Register. If no public comment is received during the period allowed for comment or unless otherwise published in the Federal Register by VA, the new system of records will become effective a minimum of 30 days after date of publication in the Federal Register. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](https://www.Regulations.gov) or mailed to VA Privacy Service, 810 Vermont Avenue, NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to "VA Employee Whole Health Program Records-VA" (199VA10). Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; telephone (704) 245-2492 (Note: not a toll-free number).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Description of Proposed Systems of Records**

The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health program to promote and maintain the physical and mental fitness of employees under their jurisdiction. VA Employee Whole Health Program Records will house records of employees engaging in whole health classes, education, coaching, and other approaches in support of their individual health and wellbeing. These records will be maintained separately from the employee medical file for the privacy of the employee as the Employee Whole Health Program records are not for documenting fitness for duty, job and/or hazard exposure or medical treatment for work-related injuries. The new system of records outlines an additional category of records to document and track employees, not previously documented, namely records resulting from participation in agency-sponsored whole health self-care and wellness activities, including health assessments, personal health planning, health coaching, preventive services, fitness programs, and any other activities that could be considered part of a comprehensive worksite whole health and wellness program. The new system of records will allow documentation of program participation, will allow workload to be captured, and will enable program evaluation to assess effectiveness overall and on individual wellbeing.

## **II. Proposed Routine Use Disclosures of Data in the System**

We are proposing to establish the following routine use disclosures of information maintained in the system.

1. VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when: a) VA or any component thereof; b) Any VA employee in his or her official capacity; c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings, provided, however, that in each case VA determines the disclosure is compatible with the purpose for which the records were collected. If the disclosure is in response to a subpoena, summons, investigative demand, or similar legal process, the request must meet the requirements

for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7), or an order from a court of competent jurisdiction under 552a(b)(11).

5. VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701. If the disclosure is in response to a request from a law enforcement entity, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7).

6. VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

9. VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

10. VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB and the Office of the Special Counsel to assist it in fulfilling its duties as required by statute and regulation.

11. VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

12. VA may disclose health care information to a non-VA health care provider, such as the Department of Defense and the Department of Health and Human Services, for the purpose of treating any VA patient, including Veterans. To better facilitate medical care and treatment for patients, VA must be prepared to share health information between VHA and other health care organizations.

13. VA may disclose name(s) and address(es) of present or former members of the armed services and/or their dependents under certain circumstances: (a) To any

nonprofit organization, if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, or (b) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency, or instrumentality has made a written request for such name(s) or address(es) for a purpose authorized by law, provided that the records will not be used for any purpose other than that stated in the request and that the organization, agency, or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

### **III. Compatibility of the Proposed Routine Uses**

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, to provide a benefit to VA, or to disclose information as required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 110 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR parts 160 and 164. VHA may not disclose individually identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) the disclosure is required by law, or (b) the disclosure is also permitted or required by HHS' Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this new system of records notice are

permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule, before VHA may disclose the covered information.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, OMB, as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

### **Signing Authority**

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Dominic A. Cussatt, Acting Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on April 20, 2021 for publication.

Dated: May 25, 2021.

**Amy L. Rose,**

*Program Analyst,*

*VA Privacy Service,*

*Office of Information Security,*

*Office of Information and Technology,*

*Department of Veterans Affairs.*



**SYSTEM NAME AND NUMBER:** VA Employee Whole Health Program Records-VA (199VA10)

**SECURITY CLASSIFICATION:** Unclassified.

**SYSTEM LOCATION:** These records are located at VA facilities (see Appendix 1) and at other Federal, state, or local government or private sector agencies or institutions which have agreements with VA to provide designated whole health self-care and wellness services to VA employees.

**SYSTEM MANAGER(S):** Executive Director, Office of Patient Centered Care and Cultural Transformation, VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Telephone number 773-820-2387 (this is not a toll-free number).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** 5 U.S.C. 7901.

**PURPOSE(S) OF THE SYSTEM:** The records will be used for the purpose of evaluating the effectiveness of whole health self-care and wellness programs for employees. The records are used for documentation of program participation, will allow workload to be captured, and will enable program evaluation to assess effectiveness overall and on individual wellbeing.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** These records may include information on current or former VA employees, contractors, and volunteers, who have participated in designated whole health self-care and wellness activities.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Records resulting from participation in agency-sponsored whole health self-care and wellness activities, including demographics (name, date of birth, race/ethnicity, and gender), health assessments (lifestyle behaviors – exercise, eating habits, tobacco use; emotional health – mood, stress, life events; and physical health – weight, blood pressure, cholesterol levels), personal health planning, health coaching, preventive services, fitness programs, and

any other activities that could be considered part of a comprehensive worksite self-care and wellness program.

**RECORD SOURCE CATEGORIES:** Information in this system of records is provided from the individual to whom the records pertain, agency whole health or employee whole health staff, and other providers of self-care and wellness activities designated to provide services to VA employees.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING**

**CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:** To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, i.e., individually identifiable health information of VHA or any of its business associates, and 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific disclosure authority in both 38 U.S.C. 7332 and 45 CFR parts 160 and 164.

1. VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.
2. VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when: a) VA or any component thereof; b) Any VA employee in his or her official capacity; c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings, provided, however, that in each case VA determines the disclosure is compatible with the purpose for which the records were collected. If the disclosure is in response to a subpoena, summons, investigative demand, or similar legal process, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7), or an order from a court of competent jurisdiction under 552a(b)(11).

5. VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of Veterans and their

dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701. If the disclosure is in response to a request from a law enforcement entity, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7).

6. VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

10. VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.
12. VA may disclose health care information to a non-VA health care provider, such as the Department of Defense and the Department of Health and Human Services, for the purpose of treating any VA patient, including Veterans.
13. VA may disclose name(s) and address(es) of present or former members of the armed services and/or their dependents under certain circumstances: (a) To any nonprofit organization, if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, or (b) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency, or instrumentality has made a written request for such name(s) or address(es) for a purpose authorized by law, provided that the records will not be used for any purpose other than that stated in the request and that the organization, agency, or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** These records are maintained on paper documents in file folders and in electronic records systems at VA facilities and at other Federal, state, or local government or private sector agencies or institutions which have agreements with VA to provide designated whole health self-care and wellness services to VA employees.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Records are retrieved by the employee's name, date of birth, Social Security number, or any combination of those identifiers. Records may also be retrieved by other unique identifiers such as type of whole health self-care and wellness service.

## **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records will be retained and destroyed in accordance with the VA Records Control Schedule, RCS 10-1, 3015.8. When permitted by VA policy, the destruction of records will take place in the following manner: Temporary, destroy 3 years after the project/activity/or transaction is completed or superseded, but longer retention is authorized if needed for business use (DAA-GRS-2017-0010-0013, item 080).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** Paper records are stored in locked file cabinets or locked rooms. Generally, file areas are locked after normal duty hours. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to VA or contractor officials with a bona fide need for access to the records. Strict control measures are enforced to ensure that access to and disclosure from these records are limited to a "need-to-know basis." Access to computer rooms within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the electronic records system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties.

**RECORD ACCESS PROCEDURES:** Individuals requesting access to and contesting the contents of records must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) Social Security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature. Individuals will submit the request to either the Employee Whole Health

Coordinator or the Whole Health Program Manager at a VA facility, dependent upon staffing at the local facility.

**CONTESTING RECORD PROCEDURES:** (See Record Access Procedures above).

**NOTIFICATION PROCEDURES:** Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below:

a. Current employees. Current employees should contact either the Employee Whole Health Coordinator or the Whole Health Program Manager at a VA facility, dependent upon staffing at the local facility at which they are employed. Individuals must furnish such identifying information as required by VA for their records to be located and identified.

b. Former employees. Former employees should contact either the Employee Whole Health Coordinator or the Whole Health Program Manager at a VA facility, dependent upon staffing at the local facility at which they were employed. Individuals submitting requests must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) Social Security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** None

**HISTORY:** None